



THE COMMONWEALTH OF MASSACHUSETTS

WATER RESOURCES COMMISSION
100 CAMBRIDGE STREET, BOSTON MA 02114

Meeting Minutes for February 24, 2005

Members in Attendance:

Karl Honkonen	Designee, EOEa
Marilyn Contreas	Designee, DHCD
Glenn Haas	Designee, DEP
Gerard Kennedy	Designee, DAR
Mark Tisa	Designee, DFG
Linda Hutchins Hutchins	Designee, DCR
Joseph Pelczarski	Designee, CZM
Gary Clayton	Public Member
David Rich	Public Member

Others in Attendance:

Sara Cohen	DCR
Steve Garabedian	USGS
Ted McIntire	Town of Reading
Peter Tassi	Town of Reading
Dan Howland	Town of Reading
John Gall	CDM
David Brew	MWRA
Margaret Kearns	Riverways
Kerry Mackin	IRWA
Lise Marx	MWRA
Robert Kovacs	MWRA
Sharon Raymond	Fay, Spofford & Thorndike
Frank Hartig	DCR
Michael Smith	Sen. Shannon's Office
Margaret Van Dusen	CRWA
Jessica Stephens Siler	Environmental League of Massachusetts
Susan Speers	Watershed Action Alliance
Stephen Lewis	Ipswich River Watershed Association
Peter Shelley	CLF
Eileen Simonson	WSCAC

Agenda Item #1: Executive Director's Report

Hutchins provided an update on the hydrologic conditions:

- A conditions report had been emailed to Commissioners prior to the regularly scheduled February 10th meeting, which was postponed due to weather. At that time, precipitation and water resources conditions were fine. She distributed an update.
- February precipitation is normal in most of the state, but below normal in the western, Connecticut River and Cape Cod regions. However, the long-term precipitation statistics are in the normal to above normal range. For the water year, it appears that everything is about 100% of normal, so no problems are expected. There is a snow storm forecast for tonight and tomorrow that will deliver more precipitation to Cape Cod, the Islands and southeastern Massachusetts. There could be another storm on Monday or Tuesday.
- The National Weather Service is putting out a Flood Potential report. Current flood potential is normal. Normal means that there will be flooding during this time of year. There was a stretch of warm days in the middle of the month and there was some minor flooding in western Massachusetts, on the Millers River.
- Ground water levels are normal or above normal.
- Streamflow is normal to above normal.
- Reservoir levels were near full earlier in the month.
- Fire danger is low.
- No droughts are predicted for New England on nation-wide maps.

Honkonen presented the Executive Director's Report:

- EPA's targeted watershed grants are being reissued for 2005. EOEa will be soliciting responses for this program. The Governor will then forward these to EPA. The allocation is \$10 million for this federal fiscal year. There will be further guidance coming from EPA sometime next week. Applications are due on May 19th. Last year, DCR received a grant for work to be conducted in the Ipswich River watershed. The Nashua River, Charles River and Narragansett watersheds also received grants. It is hoped that Massachusetts will continue to receive grant money in this round.
- There is another funding opportunity from EOEa, through the watershed implementation grants. These will be given to implement actions identified in the watershed action plans developed across the Commonwealth.
- DCR and MWRA are involved in the Watershed Protection Trust. This group met for the second time earlier this week. The trust was put in place to implement watershed management activities across the watershed lands managed by DCR jointly with the MWRA. Work plans are being developed for FY 06. The relationship that has been formed through the MOU between the agencies is working fairly well.
- Matt Rhodes, who represented agricultural interests on the WRC, has resigned. Another member from the cranberry growers industry is being actively recruited.

Agenda Item #2: Vote – Meeting Minutes for October 2004, November 2004, and December 2004

October 2004: moved by Clayton and seconded by Contreas; five in favor, two abstention

November 2004: moved by Contreas and seconded by Kennedy; six in favor one abstention

December 2004: moved by Haas and seconded by Tisa; six in favor and one abstention.

Agenda Item #3: Vote – Staff Recommendation on the Interbasin Transfer Application for the Cummingsville Branch Replacement Sewer

Hutchins reminded the Commission that this was presented last month. A public hearing on the Staff Recommendation was held in January. The applicant was the only party in attendance. No additional comments were received. To recap: the MWRA is proposing to reconstruct and enlarge the capacity of the Cummingsville sewer, which serves Burlington, most of Woburn and a small portion of Winchester. The wastewater is generated from the Mystic River subbasin of the Boston Harbor basin, the Shawsheen River basin and the Ipswich River basin, as well as the MWRA water supply system. It is discharged to the Massachusetts Coastal basin via MWRA's Deer Island treatment plant. Overflows occur only during wet weather in two locations: Horn Pond in Woburn and Vine Brook in Burlington. Usually these happen at the same time. When Woburn is overflowing, Burlington is asked to discharge to Vine Brook to alleviate this situation. Enlarging the MWRA sewer will alleviate these overflows by reducing the capacity problem with the MWRA section of the sewer.

Hutchins showed a map illustrating the project area, the watersheds involved, and the locations of the overflows. The tributary communities (Burlington, Woburn and Winchester) are very highly developed. There is not a lot of potential for sewer system expansion. I/I problems in the tributary communities were identified by DEP. DEP issued Consent Orders to Burlington and Woburn.

The design storm flow for this system is 21.6 mgd. The existing system capacity is 20.3 mgd. The towns have documented when these overflows occur. Since 1996, overflows have occurred five times in Burlington (up to 4.2 mgd) and three times in Woburn (up to 7.5 mgd).

It has been determined by engineering studies that I/I removal alone will not be enough to stop overflows and meet capacity needs. The proposal by MWRA is to abandon a very old section of the Cummingsville Branch sewer constructed in 1894. Another section, which was constructed in 1952, will be cleaned. Finally, a new replacement sewer will be constructed to increase the capacity of the system up to 24.7 mgd. Most of the construction will occur in Winchester. Capacity will be increased by 4.4 mgd. Future storms may continue to cause overflows if they are of a greater magnitude than the design storm, but this project will help to reduce the frequency and magnitude of all overflows.

Tisa asked about the design. Hutchins replied that sewer systems operate most efficiently when they are flowing at 75% of full, but this does not always occur during peak weather conditions. That is why the overall capacity of the new sewer is greater than the design storm flow.

This project was reviewed against the ITA criteria and has met all the applicable criteria. The project has met the MEPA compliance criterion. For wastewater, a viable in-basin source considered under Criterion #2 is an in-basin wastewater disposal option. There have been a few studies that have indicated that in-basin disposal is not a viable option because of public water supply and public health issues in the areas that could potentially be used to discharge sewerage in-basin. MWRA developed a facilities plan in 1995. As required by the Performance Standards for this criterion, this plan addressed relevant issues and is in the process of being implemented. The proponent was also directed to look at wastewater reuse, but this was judged not to be feasible because of the current treatment logistics. The wastewater is treated at Deer Island and

would need to be shipped back to the area for reuse. The water conservation criterion for wastewater is addressed by reviewing the I/I removal and control programs. This was addressed in detail in the Staff Recommendation. Hutchins distributed a summary of tributary community storm water plans and an article about Burlington's program to disconnect illegal sewer connections. All of the tributary communities have been working on reducing I/I and, as stated earlier, Burlington and Woburn are under DEP Consent Orders to remove I/I.

The reasonable instream flow criterion analyses focused on high flow events, because that is when these overflow events occur. The Woburn Horn Pond overflow occurs through a manhole and flows overland towards Horn Pond, which is near Woburn's water supply sources. This flows into the Aberjona River, in the Mystic River subbasin of the Boston Harbor basin. Burlington releases a chlorinated discharge to Vine Brook, in the Shawsheen River basin simultaneously when Horn Pond is overflowing.

At Vine Brook, five overflow events were analyzed by the applicant. During these events the Aberjona River flows are high: 4.9 to 25 cfs. The reduction in Vine Brook flow is estimated at up to 8%. This translates to about 0.2 cfs – not a lot of water during high flow periods. Also, the Shawsheen River experiences flooding in the downstream reaches. This could provide some relief from flooding. Burlington has public water supply wells in the Vine Brook area.

At Horn Pond, the applicant presented data for three events. It is difficult to estimate the flow at this site because it is coming from a manhole. Estimates indicate that this project would reduce flows in the brook up to 5%. Again, during high flow periods the Aberjona River is flowing at about 8-24 cfs and there is flooding in Winchester. This will reduce that flooding by a relatively small amount at these times.

The Local Water Resources Management Plan was approved during the Braintree Weymouth IBT review and approval.

The enlargement of the sewer will not cause unacceptable cumulative impacts, because it is already at capacity and the area is already highly developed and fully sewered. The Aberjona River is classified as high stress, but the impact on high flows will be negligible and the benefits to public health and safety strongly outweigh those concerns.

Public hearings were held on December 16th. The public hearing held in Woburn was well attended and all comments about this project were positive. The public hearing on the Staff Recommendation held in January was poorly attended. Only the proponent attended.

MWRA and its consultants were acknowledged. Clayton asked what percentage of the new added capacity represented I/I removal. Kovacs answered that I/I removal is an ongoing process and it is not appropriate to express it as a percentage. The additional design capacity is to meet the flow from the design storm currently expected from member communities. Each community is asked to reduce I/I, but these are aging systems. What can be removed, will be removed, but I/I removal has not been significant in reducing a design storm number. Clayton asked if the MWRA still considers it a prudent investment to provide I/I removal grants to these communities. Kovacs replied yes, I/I should be removed, but it is not feasible to reduce it in such quantities as to relieve design flow deficiencies in these sewers. Clayton asked if there is

any mechanism in place to preclude additional volume from growth coming into the sewer. Contreas said that the population projections don't predict this. Haas added that both Burlington and Woburn are under ACOs with DEP which require a 10:1 I/I removal ratio. So for every one new gallon of wastewater, 10 gallons of I/I must be removed.

Honkonen said that this is a fairly straightforward issue for the WRC to address. Normally, the Staff Recommendation would be presented an additional time after the third public hearing and a vote would be taken the following month. If there are no further questions or concerns and the WRC agreed, Honkonen requested a vote at this meeting. Clayton asked if there was anything in the regulations that prevented the Commission from doing this. Honkonen said he was not aware of anything.

V	Clayton moved with a second by Haas to approve the ITA application for the
O	Cummingsville Branch Replacement Sewer.
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E	The vote was unanimous of those present.

Agenda Item #4: Discussion – The WRC's Decision on Reading's Interbasin Transfer Application

Honkonen said there has been concern about this decision. The item under discussion today is whether the Commission wants to entertain a motion to reconsider the vote of December 9, 2004. The Secretary and Commission have recently received a letter from MEPA regarding the validity of the December 9th decision. MEPA's letter informed the Commission that the vote was not consistent with the MEPA certificate dated October 31, 2003 for the Final Environmental Impact report. Honkonen read the letter (attached) into the record.

Honkonen stated that because the Interbasin Transfer Act requires that any actions of the WRC be consistent with the MEPA certificate, the Secretary and he concurred with MEPA's position. Because of this, legal counsel has advised staff that the vote was not a valid action of the Commission. Since that action was not valid, the motion for reconsideration that has been presented to the Commission is moot and no further action is necessary.

In light of this letter from MEPA, the Commission must take action and vote again on the Interbasin Application of the Town of Reading. Honkonen stated that it would be appropriate for the Commission to direct Staff to present a revised Staff Recommendation that is consistent with the MEPA Certificate for the Commission's action. To resolve this issue without having to repeat the MEPA process, the town of Reading has proposed to alter the period of purchasing MWRA water to May through October as in the original submittal. Appropriate modifications to the Staff Recommendation conditions are being developed.

Honkonen suggested that the Commission place the matter of the revised Staff Recommendation on the agenda for the March 10, 2005 Commission meeting for discussion with the expectation that a vote to approve or deny the Interbasin Application of the town of Reading would be taken at the April 14th meeting.

M O T I O N	<p>Honkonen proposed that the Commission direct WRC Staff revise the Staff Recommendation to be consistent with the MEPA certificate in time to allow for discussion at the March 10th meeting and for a vote at the April 14th meeting. Further, he recommended that the Staff be directed to provide copies of the revised Staff Recommendation to the Commission members, the Town of Reading and other members of the public that so request, by the end of next week.</p> <p>Honkonen's recommendation was moved for a vote by Haas and seconded by Contreas.</p>
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Clayton asked if it was necessary to confirm that the WRC will make the decision at the April meeting. He said that there was a range of serious concerns presented and he did not want to push something through, given the level of concern that has been expressed. Honkonen asked if he was concerned that there would not be enough time to review all of the concerns that have been raised. Clayton responded that this may not be the case but he wanted to make sure the WRC is not locked into a deadline. He also asked if the Staff would have enough time to review the information and get a Staff Recommendation out by next week. Honkonen said that a lot of information has been received since December 9th. This has been shared with the WRC. There are people here who would like to present information today. There are a lot of concerns on all sides. He suggested that the WRC and Staff should strive to meet the April 14th date, but if more time is needed, he would respect the WRC's decision to allocate that.

Tisa stated that it is important that the technical staff review the information, but it is also important that the interested public gets it in a timely manner and also has time to review the revised staff Recommendation. Kennedy said that it is hard to digest this volume of information. He'd like to see a response from the Staff to the criticism on the technical analyses. He does not know if these are valid, and he thought it would be helpful to have these addressed. Hutchins said she was not prepared to answer this because Drury was on medical leave and contributed to the analyses as well. Hutchins asked if the review had entered a "time clock". Honkonen said he would look into this.

Clayton said that the action of the Commission was null and void, so it is as if it never happened. He suggested that WRC vote to reconsider the December decision in order to address the regulatory dilemma. Honkonen said he thought that if the WRC doesn't act in a certain time frame there is presumptive approval.

Hutchins added that a lot of the recent public comments have to do with benefits to the Ipswich River basin and not the donor basin, which is our primary concern. The staff recommendation of June 2004 had already analyzed the May through October MWRA purchase scenario.

Rich suggested that the WRC needed legal guidance on this issue. The WRC Decision needs to be consistent with the Secretary's certificate. Haas suggested that the Commission commit to a schedule and ask the town of Reading to agree to it. McIntire said that Reading would be willing to wait until April.

Simonson stated that she was confused about what had just transpired. She repeated her concerns with the December Staff Recommendation. She wanted the WRC to incorporate her concerns into the next Staff Recommendation. Shelley agreed with Simonson. He said that the

December decision was inadequate. He said the scope of the next decision should be broader than just the issues raised in the MEPA letter. He asked if the Commission would be taking comments on issues other than those addressed in the MEPA letter.

Mackin added that comments relevant to the decision should be part of the record. She disputed the assertion that Ipswich River streamflows are not relevant to the decision. She said that this is one of the core legal issues IRWA has raised regarding the viable source criterion. IRWA believes that the regulations explicitly say that an analysis of the receiving basin streamflow is required. She asked to present a Power Point™ presentation, explaining IRWA's position, at the March meeting. Honkonen said that all the information provided from all parties should be considered when revising the Staff Recommendation. He suggested that Mackin present the information today, so it could be considered as the Staff Recommendation is being revised.

Clayton was concerned that the process of considering new information was starting today, when not all members are present. Honkonen suggested that any new information also be provided electronically so it could be distributed to members who were not present. Clayton asked about the motion. Honkonen said that there was still discussion on the topic. Rich stated that he would abstain from the vote because he was not sure the WRC was doing the right thing legally. He understood that there was an agreement to extend the decision, but he wanted to be sure that the Commission would not have to revisit this if it did not follow proper legal procedure.

Mackin added that IRWA disputed the presumptive approval theory. She could not find any references to this in the ITA or the Administrative Procedures Act, although she has seen it in other Acts. She thinks this assumption is incorrect. The Commission agreed to review Mackin's Power Point™ presentation. Mackin said that the presentation had been put together just this morning. She would prefer to fine tune it.

McIntire asked how long it the presentation would take. Mackin replied about 15-20 minutes. Van Deusen said to would be helpful to respond to any new information that is presented. Honkonen said staff was not prepared to do that today, but would at the March 10th meeting.

There was a brief (10-minute) recess to set up the equipment for the presentation.

Mackin showed pictures that had been taken the Ipswich River near the Reading wellfield and the so-called Reach 8. Points made in Mackin's presentation:

- Pumping wells, such as Reading's, intercept base flow.
- This also can cause induced infiltration from the stream.
- The environmental impacts of low flows cause a river to become a series of more stagnant sections and ponded areas. Water recedes from the streambanks, which are critical habitats.
- This causes fish kills and loss of aquatic macroinvertebrates and the loss of river-dependant species of fish
- Low dissolved oxygen is an extreme problem in the upper basin of the Ipswich River.
- The riffles are most affected by low flows. These are areas of streambed which have some gradient. Water flows more swiftly and under natural conditions, these areas are aerated. This is ideal habitat.

- Riffles are the first areas to go dry. When this happens, this ideal habitat is lost, as is the continuously flowing characteristic of the river.
- The fish community is out of balance.
- Lawn watering is a huge problem that causes fish kills.
- Water bans and restrictions should be implemented.
- IRWA's concerns with the legal issues surrounding the December decision are MEPA compliance, viable sources, conservation, public notice and due process, legal precedent. IRWA believes the decision is contrary to State Policy.
- Reading is proposing to reduce its well use by 54%. This will still cause the river to dry up.

Garabedian suggested that the flows depicted by the USGS study and incorporated in to Mackin's Power Point™ presentation showed modified well use by all the water suppliers in the basin, not just Reading. Mackin agreed that the graphs she was showing did depict modification of all well use in the basin but stated that flows depicted in Reach 8 only depicted modification from Reading's and Wilmington's wells. She said she did have some other graphs that showed just Reading's well use but she could not import that into this presentation. Hutchins asked if Mackin was suggesting that streamflow threshold should be used to shut off the wells or rather should be used to trigger increased conservation. Mackin said that this presentation shows that use of Reading's wells at the projected amount is not viable. She understands that Reading has operational concerns with the existing treatment plant but she would like a requirement to use streamflow triggers to shut off the wells once the new treatment plant is on line. She wants a new analysis to determine what is viable. Hutchins stated that the ITA requirement is increased conservation measures tied to thresholds, not well shut offs.

Mackin stated that the October issue seems to be resolved, but she is still concerned with other flow statistics, such as the frequency of low flows below the 0.42 cfs threshold. Although Reading has made good efforts at conservation, she sees no trend in its water use. She disputes the 1.2 summer to winter water use ratio presented by staff. The 2003 ratio looks good, but it is because the winter water use was high. Staff noted that Reading's conservation is good, at 60 gpcd, it is difficult to criticize. There is a discrepancy between the ratios calculated by Mackin and staff. Mackin would like to meet to review the numbers. Mackin feels that Reading's current restrictions are not equivalent to a 0.42 cfs river threshold. Sprinklers should be excluded. Mackin calculated the water savings that could be realized by eliminating use of sprinklers, assuming that 25% of the water use is essential, and 75% is non-essential.

V O T E	<p>After much discussion about the time available before the next regularly scheduled WRC meeting, it was decided that a revised staff recommendation should be prepared, to be consistent with the Secretary's certificate, and to include consideration of all public comments received by March 16. The next WRC meeting would be scheduled for March 23.</p> <p>The motion was amended as noted, and read. It passed with seven in favor and one abstention</p>
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Rich requested that there be legal guidance sought on the procedure to be followed on this issue. Honkonen said he would consult with EOE legal counsel and will request that someone from the legal department attend the March meeting.

Simonson expressed concern that the intent of the Interbasin Transfer Act was being “stretched” through this review. There are serious concerns and this should be done correctly.

Meeting adjourned